

Respondent No.2 filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act" hereinafter). On that complaint, notice has been served to the

petitioner. The complainant-respondent No.2 has completed his evidence and the matter was posted for the defence evidence. On the very day, the petitioner moved an application to appear himself as a defence witness and also called the Income Tax Commissioner as well as the Branch Manager of Union Bank of India, K.M. Road, Bikaner. That application came to be dismissed. Hence this petition.

It is not the case that the petitioner has availed number of opportunities to lead evidence in defence. The moment the matter was posted for defence evidence, the petitioner moved the application expressing his desire to appear as a witness and also for recording the evidence of the Income Tax Commissioner as well as the Branch Manager of Union Bank of India, K.M. Road, Bikaner.

It is contended by the learned counsel for the petitioner that the petitioner has a defence in calling the aforesaid Branch Manager of the Bank with the documents so that the petitioner can establish that the account was closed and later on the cheque was issued by the complainant-respondent No.2. If the petitioner is not allowed to produce the Bank Manager with the documents sought for, he will be deprived of his valuable right to defend the complaint case. Learned counsel for the complainant-respondent No.2 submits that the petitioner may file a certificate from the bank. Be that as it may, how one

has to defend his case, cannot be said to be within the domain of the complainant or the prosecution. In the instant case, the petitioner himself intends to appear as a witness and seeks production of the Bank Manager. The production of the Bank Manager has some relevancy in the matter. In the circumstances, therefore, one opportunity is to be granted to the petitioner so that he may appear and make his statement, as also to produce the Bank Manager on the same day. If the Bank Manager appears, the trial Court is directed to record his statement also.

In this view of the matter, the petition is allowed. The impugned orders passed by both the Court below are set aside. The trial Court is directed to record the statement of the petitioner on the next date fixed by it, as also summon the Bank Manager of Union Bank of India, K.M. Branch, Bikaner. The summon be given "Dasti" to the petitioner and it shall be the responsibility of the petitioner to call the Bank Manager and produce him on the next date. If the petitioner fails to produce the Bank Manager on the same day, no further opportunity will be granted to the petitioner.

(H.R. PANWAR), J.

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